

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

MATTHEW ALAN SMITH,

Plaintiff,

v.

UNITED PARCEL SERVICE INC.,

Defendant.

Case No. 3:14-cv-01681-PK

**ORDER ADOPTING FINDINGS AND
RECOMMENDATION**

Matthew Alan Smith, P.O. Box 350217, Westminster, CO 80035, *pro se*.

Calvin L. Keith and Joanna T. Perini-Abbott, PERKINS COIE, LLP, 1120 NW Couch Street, 10th Floor, Portland, OR 97209. Of Attorneys for Defendant.

Michael H. Simon, District Judge.

United States Magistrate Judge Paul Papak issued Findings and Recommendation in this case on December 28, 2015. Dkt. 39. Judge Papak recommended that this Court grant Plaintiff Matthew Alan Smith's ("Plaintiff" or "Smith") Motion to Transfer Venue (Dkt. 26), deny as moot Smith's Motion to Stay (Dkt. 27), and also deny as moot Defendant United Parcel Service Inc.'s ("Defendant" or "UPS") Motion to Dismiss (Dkt. 21). No party has filed objections.

Under the Federal Magistrates Act ("Act"), the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C.

§ 636(b)(1). If a party files objections to a magistrate’s findings and recommendations, “the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review de novo magistrate’s findings and recommendations if objection is made, “but not otherwise”).

Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.”

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Judge Papak’s Findings and Recommendation for clear error on the face of the record. No such error is apparent. Although the decision does not rest on these grounds, the Court notes that Smith asserts that he will be able to comply with the Order to Show Cause (Dkt. 22-11) issued by the Tenth Circuit because an attorney has agreed to represent him. *See* Dkt. 36 at 1. Accordingly, the Court **ADOPTS** Judge Papak’s Findings and Recommendation, Dkt. 39. Smith’s Motion to Transfer Venue (Dkt. 26) is granted. Smith’s Motion to Stay (Dkt. 27) and UPS’s Motion to Dismiss (Dkt. 21) are denied as moot. The Clerk of the Court is

directed to transfer this action to the United States District Court for the District of Colorado and to send a copy of this Order and Judge Papak's Findings and Recommendation to that court.

IT IS SO ORDERED.

DATED this 25th day of January, 2016.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge